

## REMARKS

### Summary of Office Action

Claims 16-49 continue to be rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Klueppel et al., U.S. Patent No. 5,145,665 (hereafter "KLUEPPEL").

Claims 16-49 continue to be rejected under 35 U.S.C. § 103(a) as also allegedly being unpatentable over Giret et al., U.S. Patent No. 5,409,640 (hereafter "GIRET").

### Response to Office Action

Reconsideration and withdrawal of the rejections of record are again respectfully requested in view of the following remarks.

#### ***Response to Rejection of Claims under 35 U.S.C. § 103(a) over KLUEPPEL***

Claims 16-49, i.e., all claims of record, continue to be rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over KLUEPPEL for the reasons of record.

Applicants respectfully traverse this rejection for all of the reasons which have been set forth in the replies to the previous Office Actions. The corresponding remarks are incorporated herein in their entireties.

In addition, it is pointed out that the Examiner again has failed to support the contention that the teaching of water-soluble Carbopols in KLUEPPEL embraces crosslinked materials (see middle of page 2 of the present Office Action), and in particular the gel-forming acrylate-alkyl acrylate copolymers recited in the present independent claims (let alone the specific copolymers recited in claims 22 and 38) by any evidence

P29707.A05

whatsoever. In particular, the Examiner has failed to explain how a polymer (or any other substance) can be both water-soluble and gel-forming.

Further, Applicants continue to respectfully disagree with the Examiner for all of the reasons set forth in response to the previous Office Action that the flavorants in the toothpastes and toothcreams of KLUEPPEL act as perfumes.

Additionally, it is pointed out that the present claims are not directed to a toothpaste, but to a cosmetic or dermatological deterative preparation. Accordingly, even if one were to assume, *arguendo*, that a flavorant and a perfume may be the same under certain circumstances, the question in the present context is whether or not one of ordinary skill in the art would be motivated to use a flavorant used in a toothpaste as a perfume in a cosmetic or dermatological deterative preparation.

It further is pointed out that Applicants are not aware that a toothpaste is generally considered to be a cosmetic or dermatological deterative preparation, and neither has the Examiner provided any evidence in this regard. All that these compositions have in common is that they are used for cleaning a surface of the human body. However, a toothpaste is for cleaning the surface of teeth, whereas a cosmetic or dermatological deterative preparation is applied to skin. This is yet another reason why KLUEPPEL is unable to render obvious the subject matter of any of the claims of record.

Applicants note that the Examiner continues to argue that "Applicant's recitation of shampoo and shower preparations is a statement of intended use, which is afforded little patentable weight". In this regard, Applicants note that the Examiner has not provided a single example of a composition which is used (or at least recommended for use) as both toothpaste and shampoo or as both toothpaste and shower preparation, respectively.

P29707.A05

There clearly is no motivation, let alone expectation of success, in this regard.

Moreover, even if one were to assume, *arguendo*, that one of ordinary skill in the art would typically be motivated to use a toothpaste as a cosmetic or dermatological deterrent preparation such as, e.g., a shampoo and a shower preparation, it is not seen why one of ordinary skill in the art would be motivated to use a the specific toothpaste of KLUEPPEL, i.e., a composition which contains a polysaccharide-splitting enzyme, on skin and/or hair, let alone why there would be any expectation of success associated therewith.

Applicants also point out that the Examiner again has failed to explain why KLUEPPEL renders obvious the subject matter of present claim 49, i.e., why one of ordinary skill in the art would be motivated to employ any of the toothpastes of KLUEPPEL which are disclosed or allegedly rendered obvious by this document in a method of caring for skin and/or hair. Also, the Examiner has failed to explain why there would be any expectation of success.

For at least all of the foregoing reasons and the reasons set forth in the replies to the previous Office Actions, KLUEPPEL fails to render obvious the subject matter of any one of claims 16-49. Accordingly, withdrawal of the claim rejection under 35 U.S.C. § 103(a) over KLUEPPEL is again respectfully requested.

***Response to Rejection of Claims under 35 U.S.C. § 103(a) over GIRET***

Claims 16-49 are rejected also under 35 U.S.C. § 103(a) as allegedly being unpatentable over GIRET.

Applicants respectfully traverse this rejection for all of the reasons which have been set forth in the replies to the previous Office Actions. The corresponding remarks are

P29707.A05

incorporated herein in their entireties.

In addition, Applicants point out again that while GIRET mentions the optional use of anionic polymers as skin or hair conditioning agents in the compositions disclosed therein, the paragraphs of GIRET which make reference to anionic (and amphoteric) polymers apparently are boiler plate statements which are even in conflict with other statements in GIRET, wherefore it is evident that these statements do not reflect the actual and intended teaching of GIRET.

Specifically, as set forth in the response to the previous Office Action, GIRET first mentions that “[t]he compositions of the invention preferably also contain a cationic or nonionic polymeric skin or hair conditioning agent” and then goes on to state that “[u]seful polymers are the cationic, nonionic, amphoteric, and anionic polymers useful in the cosmetic field. Preferred are cationic and nonionic polymers used in the cosmetic fields as hair or skin conditioning agents.”

That the inventors of GIRET had no intention to teach or suggest the use of anionic polymers as skin or hair conditioning agents for use in their compositions is also apparent from the fact that the only two polymers which are used in the Examples of GIRET for this purpose, i.e., “Polymer 1” and “Polymer 2” (see table at col. 10, lines 5-27), are cationic polymers.

Even further, claim 12 of GIRET is directed to a composition which comprises a cationic or nonionic polymeric skin or hair conditioning agent. Claim 12 does mention “homopolymers and copolymers derived from acrylic and/or methacrylic acid”; however these polymers are expressly characterized as “cationic and nonionic.”

It further is pointed out again that all of the three components (a) to (c) recited in the present independent claims belong to classes of components which are only optional components of the composition of GIRET (assuming, *arguendo*, that the inventors of GIRET intended to teach anionic skin or hair conditioning agents). In other words, in order to render obvious the claimed deterative preparation, GIRET would not only have to provide motivation (and expectation of success) to employ, in addition to the required components of the composition of GIRET as recited in, e.g., claim 1 thereof, simultaneously (a) a nonionic or betaine surfactant, (b) a skin or hair conditioning agent and (c) a hair or skin moisturizer, but provide motivation to use in combination

(a) an alkyl polysaccharide as the nonionic or betaine surfactant (instead of, e.g., a C<sub>12</sub>-C<sub>14</sub> fatty acid mono- and diethanolamide or the alkyl betaines of formula (VII) and amido betaines of formula (VIII) set forth in col. 7, lines 8-23 of GIRET),

(b) an anionic skin or hair conditioning agent (i.e., not one of the cationic and nonionic skin or hair conditioning agents which are (at least) preferred according to GIRET) and in particular, a gel-forming acrylate-alkyl acrylate copolymer, and

(c) a water-soluble liquid polyol as the hair or skin moisturizer (instead of essential amino acid compounds found naturally occurring in the stratum corneum of the skin and water-soluble nonpolyol nonocclusives (see col. 8, lines 38-41 of GIRET)).

Even more selections would have to be made in the case of the present dependent claims. The Examiner has failed to explain why one of ordinary skill in the art would have been motivated to select and use all three of the above components (a) to (c) in combination.

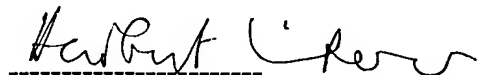
Applicants note that the only reason why the Examiner believes that one of ordinary skill in the art would be motivated by GIRET to use the above combination is "that the reference teaches that one may do so" (page 5, end of second paragraph of the present Office Action). Applicants respectfully submit that the question to be answered here is not why one of ordinary skill in the art may do so, but why he or she would do so.

For at least all of the foregoing reasons and the reasons set forth in the replies to the previous Office Actions, GIRET fails to render obvious the subject matter of any of the present claims. Accordingly, the claim rejection under 35 U.S.C. § 103(a) over GIRET is unwarranted, wherefore withdrawal thereof is again respectfully requested.

### **CONCLUSION**

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is again respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,  
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